

By

Frank Yuda

H. B. No. 1595

A BILL TO BE ENTITLED

AN ACT

relating to certain permit conditions and to permits and exemptions issued by the Texas Air Control Board, the Texas Department of Health, and the Texas Water Commission; imposing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.053, Health and Safety Code, is amended to read as follows:

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The board may not grant a construction permit for a lead smelting plant at a site[+:

[++}] located within 3,000 feet of an individual's residence[+-and

[+2)--at--which--lead-smelting-operations-have-not-been conducted-before-August-31-1987-

[+b)--This-section-does-not-apply-to:

[+1)--a--modification--of--a--lead--smelting--plant--in operation-on-August-31-1987-

[+2)--a-lead-smelting-plant-or-modification-of-a-plant with--the-capacity-to-produce-not-more-than-200-pounds-of-lead-each hour+-or

[+3)--a-lead-smelting-plant-that+-when-the-plant--began operation+-was--located--more--than--3,000--feet--from-the-nearest residence].

1 (b) [te] In this section, "lead smelting plant" means a
2 facility operated as a smelter for processing lead.

3 SECTION 2. Subchapter C, Chapter 382, Health and Safety
4 Code, is amended by adding Sections 382.0531 and 382.0532 to read
5 as follows:

6 Sec. 382.0531. PERMIT REQUIRED FOR LEAD SMELTING OR BATTERY
7 RECLAMATION PLANT. (a) A person may not construct, modify, or
8 operate a facility that is or will be used as a lead smelting plant
9 or a lead-acid battery reclamation plant unless the person has
10 obtained the appropriate permit from the board under Section
11 382.051 or 382.054.

12 (b) The board may not exempt a facility from the permit
13 requirements of Subsection (a).

14 (c) The board by rule shall adopt standards and conditions
15 for issuance of a construction or operating permit for a facility
16 that is or will be used as a lead smelting plant or a lead-acid
17 battery reclamation plant. The rules, at a minimum, shall require
18 that:

19 (1) the smelting or refining of lead or the processing
20 of lead-acid batteries for reclamation take place only in a totally
21 enclosed facility;

22 (2) appropriate emission control devices, as
23 determined by board rule, be installed in the facility to prevent
24 the emission of lead-contaminated air;

25 (3) a lead smelting furnace be totally enclosed in a
26 building; and

27 (4) a storage pile or other accumulation of

1 lead-bearing materials such as slag or reclaimed battery plates be
2 either:

3 (A) totally enclosed in a building; or

4 (B) properly disposed of at a fully authorized
5 hazardous waste disposal site.

6 (d) A permit to operate a facility used as a lead smelting
7 plant or a lead-acid battery reclamation plant is subject to review
8 every five years from the date on which the permit is issued or
9 continued.

10 (e) The board may not continue an operating permit for a
11 facility used as a lead smelting plant or a lead-acid battery
12 reclamation plant unless at the time the permit is scheduled for
13 review the facility is using the best available control technology,
14 considering the technical practicability and economic
15 reasonableness of reducing or eliminating emissions from the
16 facility.

17 Sec. 382.0532. MONITORING OF LEAD LEVELS. (a) The board
18 shall set up and maintain ambient air monitoring stations to
19 monitor emissions from all lead smelting or lead-acid battery
20 reclamation facilities.

21 (b) A monitoring station shall be located as near as
22 possible to, and not farther than one-half mile from, the facility
23 it is monitoring.

24 (c) The holder of the permit for the facility being
25 monitored shall pay the costs of monitoring the facility.

26 SECTION 3. Subchapter C, Chapter 382, Health and Safety
27 Code, is amended by adding Section 382.0511 to read as follows:

1 Sec. 382.0511. EXPIRATION AND CONTINUANCE OF CONSTRUCTION
2 PERMIT. (a) Except as provided by Subsection (b), a construction
3 permit issued under Section 382.051 expires five years after the
4 date of issuance if the permit holder has not obtained an operating
5 permit under Section 382.054.

6 (b) The board may continue a construction permit issued
7 under Section 382.051 for a permit holder who has not obtained an
8 operating permit under Section 382.054 if the permit holder:

9 (1) applies for the continuance at least one year
10 before the construction permit expires; and

11 (2) shows just cause for the continuance.

12 (c) The board shall hold a public hearing before continuing
13 a construction permit under Subsection (b) if the applicant for the
14 continuance cannot obtain an operating permit for the facility
15 under Section 382.054 because the facility for which the permit is
16 sought is in violation of this chapter or a rule adopted under this
17 chapter.

18 (d) The board may not continue a construction permit under
19 Subsection (b) if the board determines that the continued operation
20 of the facility for which the permit is sought is an existing or
21 potential threat to public health or the environment.

22 SECTION 4. Section 382.054, Health and Safety Code, is
23 amended by adding Subsection (e) to read as follows:

24 (e) A holder of a construction permit issued under Section
25 382.051 for a facility that does not, within the time provided by
26 Subsection (a), meet the requirements of Subsection (b) for
27 issuance of an operating permit is liable for a penalty of \$25 per

1 day for each day the facility operates without meeting those
2 requirements after that time expires. The penalty imposed under
3 this section is in addition to any other penalty imposed by law.

4 SECTION 5. Subchapter C, Chapter 382, Health and Safety
5 Code, is amended by adding Section 382.0581 to read as follows:

6 Sec. 382.0581. LIMITATION ON EXEMPTIONS AND PERMITS FOR
7 CERTAIN FACILITIES EMITTING AIR TOXICS. (a) The board may not
8 exempt from any permit requirement or procedure under this
9 subchapter a facility or group of facilities that individually or
10 together emits or has the potential to emit significant levels of
11 air toxics as determined by board rule.

12 (b) The board may not issue a permit to a facility or group
13 of facilities that emits or has the potential for emitting
14 significant levels of air toxics as determined by board rule unless
15 the facility uses the best available control technology,
16 considering the technical practicability and economic
17 reasonableness of reducing or eliminating emissions from the
18 facility.

19 (c) An operating permit for a facility that emits air toxics
20 is subject to review every five years from the date the permit is
21 issued or continued.

22 (d) The board may not continue a permit for a facility that
23 emits air toxics if substantial improvements in control technology
24 have occurred or substantially more stringent ambient air standards
25 have been adopted during the preceding permit period unless at the
26 time the permit is scheduled for review the facility uses the best
27 available control technology, considering the technical

1 practicability and economic reasonableness of reducing or
2 eliminating emissions from the facility.

3 (e) In this section, "air toxics" means hazardous air
4 pollutants listed under Section 112 of the federal Clean Air Act
5 (42 U.S.C. Section 7412) as amended by the Clean Air Act Amendments
6 of 1990 (Pub. L. No. 101-549).

7 SECTION 6. Section 382.082, Health and Safety Code, is
8 amended by amending Subsections (c), (d), and (e) and adding
9 Subsection (g) to read as follows:

10 (c) Notwithstanding Subsection (b), if the apparent
11 violation or threat of violation of a nonclerical requirement
12 continues later than the 30th day after the date on which notice is
13 received under Subsection (a), the executive director shall
14 institute proceedings under Section 382.023(b) to issue an
15 appropriate order providing for compliance within 90 [~~100~~] days of
16 the notice of the violation.

17 (d) Under Subsection (c) if the board determines that good
18 faith efforts to correct the violation have been made, the board
19 may adopt an order under Section 382.023(b) providing for
20 compliance later than the 90th [~~100th~~] day after issuance of the
21 notice under Subsection (a). It is intended that "good faith
22 effort" be strictly interpreted by the board while giving due
23 consideration to economic reasonableness and technical
24 practicability.

25 (e) Notwithstanding Subsection (b), if a violation of an
26 order issued under Subsection (c) continues later than the 90th
27 [~~100th~~] day after the date on which the original notice of

1 violation is received, the board or executive director shall:

2 (1) institute a suit, as provided by Subsection (b)
3 for civil penalties and appropriate injunctive relief;

4 (2) begin an action under Section 382.059 to revoke a
5 permit or exemption;

6 (3) begin an action for administrative penalties under
7 Section 382.088; or

8 (4) pursue any combination of the remedies under this
9 subsection.

10 (g) If the board determines that the person in violation is
11 a flagrant violator as defined by board rule, the board instead
12 shall immediately seek an injunction under Section 382.084(c) to
13 stop the operation of the facility at which the violation is
14 occurring. The board by rule shall define a flagrant violator
15 according to a specified number and severity of previous violations
16 by a single person or at a single facility.

17 SECTION 7. Section 382.085(c), Health and Safety Code, is
18 amended to read as follows:

19 (c) A person who violates any provision of this chapter or
20 any board rule or order is subject to a civil penalty of not less
21 than \$100 [\$50] or more than \$25,000 for each day of violation and
22 for each act of violation, as the court or jury considers proper.

23 SECTION 8. Section 382.017(e), Health and Safety Code, is
24 amended to read as follows:

25 (e) Except as provided by Sections 382.018-382.021 or
26 382.0531, the board by rule may not specify:

27 (1) a particular method to be used to control or abate

1 air pollution;

2 (2) the type, design, or method of installation of
3 equipment to be used to control or abate air pollution; or

4 (3) the type, design, method of installation, or type
5 of construction of a manufacturing process or other kind of
6 equipment.

7 SECTION 9. Sections 382.055(a), (c), and (h), Health and
8 Safety Code, are amended to read as follows:

9 (a) Except as provided by Section 382.0531 or 382.0581, an
10 [An] operating permit is subject to review every 15 years.

11 (c) No less than 180 days before the expiration of the 15th
12 year after the date on which an operating permit is issued or
13 continued under this chapter, or the fifth year after the date on
14 which a permit subject to Section 382.0531 or 382.0581 is issued or
15 continued, the board shall provide written notice to the permit
16 holder, by registered or certified mail, that the permit is
17 scheduled for review in accordance with this section. The notice
18 must include a description of the procedure for filing a review
19 application and the information to be included in the application.

20 (h) If the holder of an operating permit to whom the board
21 has mailed notice of this section does not apply for review of that
22 permit by the date specified by the board under this section, the
23 permit expires:

24 (1) 15 years after the date on which the permit is
25 issued or, if the permit has been continued, the date on which the
26 permit is last continued; or

27 (2) five years after the date on which a permit

1 subject to Section 382.0531 or 382.0581 is issued or, if the permit
2 has been continued, the date on which the permit is last continued.

3 SECTION 10. Section 382.057, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 382.057. EXEMPTION. Except as provided by Section
6 382.0531 or 382.0581, the [The] board by rule may exempt from the
7 requirements of Sections 382.051-382.055 and Section 382.060
8 certain types of facilities if it is found on investigation that
9 such facilities or types of facilities will not make a significant
10 contribution of air contaminants to the atmosphere.

11 SECTION 11. Subchapter C, Chapter 361, Health and Safety
12 Code, is amended by adding Section 361.0881 to read as follows:

13 Sec. 361.0881. REMOVAL AND RECLAMATION BY PERMIT HOLDER.

14 (a) The commission or the department shall require as a condition
15 of any permit issued or renewed under this subchapter that the
16 permit holder:

17 (1) remove from any property in the vicinity of the
18 permitted facility any waste, debris, or other material generated
19 by the facility's activities that presents an existing or potential
20 threat to public health and safety or the environment; and

21 (2) fully reclaim any property from which that
22 material has been removed.

23 (b) The commission or department may require as a condition
24 of any permit issued under this subchapter financial assurance in a
25 form satisfactory to the agency and consistent with the risk
26 involved to ensure the recovery of the costs of any removal or
27 reclamation required under Subsection (a).

1 SECTION 12. Subchapter C, Chapter 382, Health and Safety
2 Code, is amended by adding Section 382.0582 to read as follows:

3 Sec. 382.0582. REMOVAL AND RECLAMATION BY PERMIT HOLDER.

4 (a) The board shall require as a condition of any permit issued or
5 renewed under this subchapter that the permit holder:

6 (1) remove from any property in the vicinity of the
7 permitted facility any waste, debris, or other material generated
8 by the facility's activities that presents an existing or potential
9 threat to public health and safety or the environment; and

10 (2) fully reclaim any property from which that
11 material has been removed.

12 (b) The board may require as a condition of any permit
13 issued under this subchapter financial assurance in a form
14 satisfactory to the board and consistent with the risk involved to
15 ensure the recovery of the costs of any removal or reclamation
16 required under Subsection (a).

17 SECTION 13. Subchapter B, Chapter 26, Water Code, is amended
18 by adding Section 26.0295 to read as follows:

19 Sec. 26.0295. REMOVAL AND RECLAMATION BY PERMIT HOLDER. (a)

20 The commission shall require as a condition of any permit issued or
21 renewed under this subchapter that the permit holder:

22 (1) remove from any property in the vicinity of the
23 permitted facility any waste, debris, or other material generated
24 by the facility's activities that presents an existing or potential
25 threat to public health and safety or the environment; and

26 (2) fully reclaim any property from which that
27 material has been removed.

1 (b) The commission may require as a condition of any permit
2 issued under this subchapter financial assurance in a form
3 satisfactory to the commission and consistent with the risk
4 involved to ensure the recovery of the costs of any removal or
5 reclamation required under Subsection (a).

6 SECTION 14. Subchapter D, Chapter 27, Water Code, is amended
7 by adding Section 27.0515 to read as follows:

8 Sec. 27.0515. REMOVAL AND RECLAMATION BY PERMIT HOLDER. (a)
9 The commission shall require as a condition of any permit issued or
10 renewed under this subchapter that the permit holder:

11 (1) remove from any property in the vicinity of the
12 permitted facility any waste, debris, or other material generated
13 by the facility's activities that presents an existing or potential
14 threat to public health or the environment; and

15 (2) fully reclaim any property from which that
16 material has been removed.

17 (b) The commission may require as a condition of any permit
18 issued under this subchapter financial assurance in a form
19 satisfactory to the commission and consistent with the risk
20 involved to ensure the recovery of the costs of any removal or
21 reclamation required under Subsection (a).

22 SECTION 15. (a) Section 382.0531, Health and Safety Code,
23 as added by this Act, and the changes made by this Act to Section
24 382.053, Health and Safety Code, apply to any facility at which
25 lead smelting or lead-acid battery reclamation activities are
26 conducted on or after September 1, 1992.

27 (b) Section 382.0581, Health and Safety Code, as added by

1 this Act, applies to a facility or group of facilities that on or
2 after September 1, 1992, emits or has the potential to emit
3 significant levels of air toxics as established by Texas Air
4 Control Board rules adopted under that section.

5 (c) An exemption granted before the effective date of this
6 Act by the Texas Air Control Board to a facility or group of
7 facilities that emits air toxics or has the potential to emit
8 significant levels of air toxics as established by board rules
9 expires on September 1, 1992.

10 (d) Not later than December 1, 1991, the Texas Air Control
11 Board shall:

12 (1) identify all facilities that emit air toxics or
13 have the potential for emitting significant levels of air toxics
14 for which the board, before the effective date of this Act, has
15 issued exemptions from permit requirements or procedures under
16 Section 382.057, Health and Safety Code; and

17 (2) notify the holder of the exemption for each of
18 those facilities regarding the changes in law made by Section
19 382.0581, Health and Safety Code, as added by this Act, and made by
20 Subsection (c) of this section and the time within which the
21 facility must comply with those changes in law.

22 (e) Not later than March 1, 1992, the Texas Air Control
23 Board by rule shall establish the significance levels for air
24 toxics necessary to implement Section 382.0581, Health and Safety
25 Code, as added by this Act.

26 SECTION 16. The changes made by this Act to Sections 382.082
27 and 382.085, Health and Safety Code, as amended by this Act, apply

1 only to a violation that occurs on or after the effective date of
2 this Act. The previous law applies to a violation that occurs
3 before that date, and the previous law is continued in effect for
4 that purpose.

5 SECTION 17. This Act takes effect September 1, 1991.

6 SECTION 18. The importance of this legislation and the
7 crowded condition of the calendars in both houses create an
8 emergency and an imperative public necessity that the
9 constitutional rule requiring bills to be read on three several
10 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 1595

By Frank Yashin

A BILL TO BE ENTITLED

AN ACT

relating to certain permit conditions and to permits and exemptions issued by the Texas Air Control Board, the Texas Department of Health, and the Texas Water Commission; imposing civil penalties.

MAR 5 1991

1. Filed with the Chief Clerk.

MAR 13 1991

2. Read first time and Referred to Committee on

ENVIRONMENTAL AFFAIRS

3. Reported ____ favorably (as amended) (as substituted) and sent to Printer at _____

4. Printed and distributed at _____

5. Sent to Committee on Calendars at _____

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____
present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ days, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by _____
(a viva voce vote.)
(_____ years, _____ days.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____